

REMARKS

In response to the Restriction Requirement set forth in the outstanding Office Action, Applicants hereby provisionally elect, with traverse, the invention of Group I, claims 1-6 and 13-16, drawn to an animal growth promoting composition.

The grounds for traverse are as follows.

PCT Rule § 13.1 states, "The international application shall relate to one invention only or to a group of inventions so linked as to form a single general inventive concept ("requirement of the immunity of invention"). PCT Rule § 13.2 provides that "Where a group of inventions is claimed in one in the same international application, the requirement of unity of invention referred to in Rule § 13.1 shall be fulfilled only when there is a technical relationship among those inventions involving one or more of the same or corresponding special technical features. Expressions "special technical features" shall mean those technical features that define a contribution which each of the claimed inventions, considered as a whole, makes over the prior art." Thus, the PCT requirement is art-based.

However, Applicants respectfully submit that the Office Action fails to satisfy the above requirements of PCT Rule § 13.1 and PCT Rule § 13.2 by citing U.S. 5,332,765 as allegedly disclosing the special technical feature of the claims. In this regard, on page 3 in the first paragraph of the Office Action, it

indicated that the common special technical feature in all the groups is an animal growth promoting composition and a method of preparing it. The Office contends that this feature cannot be a special technical feature, because it is shown in the prior art of U.S. 5,332,765.

Applicants disagree and submit that the special technical feature common to Groups I and II is the animal growth promoting composition comprising the following three components: (1) sorbic acid/sorbate, (2) formic acid, and (3) propionic acid (see claims 1 and 7). U.S. 5,332,765 fails to disclose this claimed animal growth promoting composition having these three ingredients.

Indeed, U.S. 5,332,765 seems to be totally irrelevant to the claimed animal growth promoting composition, as it relates to microbicial compositions for the protection of aqueous functional fluids. See the Abstract in U.S. 5,332,765. The compositions therein do not even seem to contain any of the above-noted three components sorbic acid/sorbate, formic acid and propionic acid of claim 1 of the present application.

Thus, in view of the above, Applicants respectfully submit that the claimed invention is distinct from the disclosure in U.S. 5,332,765. As a result, Applicants believe that the Office Action fails to satisfy its burden in showing that the claims lack a special technical feature over the art.

Furthermore, it is noted that, in applying the appropriate PCT legal standard, the international searching authority did not find the unity of invention as lacking, and thus all claims were searched together in one application and unity was not indicated as lacking. Since the Patent Office has the benefit of the international search report, the Patent Office should follow the international searching authority and find that unity of invention exists.

Further, it is noted that it would not take an undue burden to search and examine the inventions of Groups I and II together. In this regard, Group II is drawn to a method of preparing the animal growth promoting composition of Group I. As such, the subject matter of Groups I and II is substantially related and contains overlapping subject matter. Consequently, a search of the invention of either Group I or II would necessarily overlap that of the other.

For these reasons, it is respectfully submitted the Office's determination of lack of unity is improper and should be withdrawn. Thus, it is believed that Applicants are entitled to an Action on the merits of all pending claims in their full scope, in the present application. Favorable action on the merits is solicited.

In the event that the Office disagrees with the traversal and maintains the requirement, kindly consider the possibility of rejoinder of the non-elected invention upon a

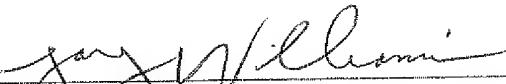
determination of allowance of the elected invention, in accordance with the U.S. restriction practice.

If the Office has any suggestion to expedite prosecution, please contact the undersigned attorney at the telephone number below.

The Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 25-0120 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17.

Respectfully submitted,

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